

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF PUERTO RICO

CAROL WOJCIECHOWICZ, et al.,  
Plaintiffs,  
v.  
UNITED STATES OF AMERICA,  
Defendant.

CIVIL NO. 04-1846 (RLA)  
CIVIL NO. 04-1856 (RLA)  
CIVIL NO. 04-2342 (RLA)

**THIS DOCUMENT RELATES TO:  
CIV. NO. 04-1856 (RLA)**

**ORDER IN THE MATTER OF FTCA  
ADMINISTRATIVE CLAIM**

Defendant, the United States of America, has moved the court to dismiss certain claims asserted by some of the plaintiffs in these proceedings arguing that no administrative claim was filed on their behalf as mandated by the provisions of the Federal Tort Claims Act ("FTCA"), 28 U.S.C. § 2675(a).

**BACKGROUND**

These consolidated cases<sup>1</sup> arise out of an aircraft crash that occurred on January 5, 2002 in the vicinity of the peak of El Yunque, Puerto Rico. The aircraft was owned by Alexander Leasing, LLC and flown by decedent Alexander Wojciechowicz. In addition to the pilot, four passengers were also killed in the accident. These were: (1) Katherine Wojciechowicz Angrick (pilot's daughter), (2) Mark R.

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<sup>1</sup> See, Carol Wojciechowicz v. United States of America, Civ. No. 04-1846 (RLA) (contribution claims) and U.S. Specialty Ins. Co. v. United States of America, Civ. No. 04-2342 (RLA) (aircraft insurer indemnity claim).

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4 Angrick (Katherine's husband), (3) Heath (Katherine's son), and Lois  
5 Angrick (Mark's mother).

6 On or about January 5, 2004, Carol Wojciechowicz, the pilot's  
7 widow, individually and as Executrix of the Estate of Alexander  
8 Wojciechowicz, filed a Standard Form 95 ("SF-95") Claim for Damage,  
9 Injury, or Death with the FAA. The claim sought both economic and  
10 non-economic damages, including loss to the estate, funeral and  
11 burial expenses and loss of care, comfort and companionship for the  
12 "[w]rongful death of Alexander Wojciechowicz."

13 On or about January 5, 2004, Michael T. Wojciechowicz,  
14 individually and as Executor of the Estate of Katherine Wojciechowicz  
15 Angrick, filed a SF-95, claim for Damage, Injury, or Death with the  
16 FAA. The claim described the damages being sought as "[w]rongful  
17 death damages for the death of Katherine Wojciechowicz Angrick"  
18 including "all appropriate wrongful death damages including, but not  
19 limited to funeral and burial expenses, loss to the estate, loss of  
20 care, guidance and companionship."

21 Subsequently, Carol Wojciechowicz, as well as her two surviving  
22 children, Michael and Susan, instituted these proceedings seeking  
23 damages for the deaths of Alexander and Katherine Wojciechowicz.

### 24 **Subject Matter Jurisdiction**

25 The court's authority to entertain a particular controversy is  
26 commonly referred to as subject matter jurisdiction. "In the absence  
of jurisdiction, a court is powerless to act.") Am. Fiber &

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4 Finishing, Inc. v. Tyco Healthcare Group, LP, 362 F.3d 136, 138 (1<sup>st</sup>  
5 Cir. 2004).

6 Federal courts are courts of limited jurisdiction and hence,  
7 have the duty to examine their own authority to preside over the  
8 cases assigned. "It is black-letter law that a federal court has an  
9 obligation to inquire sua sponte into its own subject matter  
10 jurisdiction." McCulloch v. Velez, 364 F.3d 1, 5 (1<sup>st</sup> Cir. 2004). See  
11 also, Bonas v. Town of North Smithfield, 265 F.3d 69, 73 (1<sup>st</sup> Cir.  
12 2001) ("Federal courts, being courts of limited jurisdiction, have an  
13 affirmative obligation to examine jurisdictional concerns on their  
14 own initiative.")

15 Further, subject matter jurisdiction is not waivable or  
16 forfeited. Rather, it involves a court's power to hear a case, it may  
17 be raised at any time. Kontrick v. Ryan, 540 U.S. 443, 124 S.Ct. 906,  
18 157 L.Ed.2d 867 (2004); United States v. Cotton, 535 U.S. 625, 122  
19 S.Ct. 1781, 152 L.Ed.2d 860 (2002). "The objection that a federal  
20 court lacks subject-matter jurisdiction... may be raised by a party,  
21 or by a court on its own initiative, at any stage in the litigation,  
22 even after trial and the entry of judgment." Arbaugh v. Y&H Corp.,  
23 \_\_\_\_ U.S. \_\_\_\_, 126 S.Ct. 1235, 1240, 163 L.Ed.2d 1097 (2006).

24 The proper vehicle for challenging the court's subject matter  
25 jurisdiction is Rule 12(b)(1) whereas challenges to the sufficiency  
26 of the complaint are examined under the strictures of Rule 12(b)(6).  
In disposing of motions to dismiss for lack of subject matter

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4 jurisdiction the court is not constrained to the allegations in the  
5 pleadings as with Rule 12(b)(6) petitions. Rather, the court may  
6 review extra-pleading material without transforming the petition into  
7 a summary judgment vehicle. Gonzalez v. United States, 284 F.3d 281,  
8 288 (1<sup>st</sup> Cir. 2002); Aversa v. United States, 99 F.3d 1200, 1210 (1<sup>st</sup>  
9 Cir. 1996).

#### 10 FTCA - Exhaustion of Administrative Remedies

11 The United States, as a sovereign, is immune from suit unless it  
12 waives its immunity by consenting to be sued. See, United States v.  
13 Mitchell, 463 U.S. 206, 212, 103 S.Ct. 2961, 77 L.Ed.2d 580 (1983)  
14 ("It is axiomatic that the United States may not be sued without its  
15 consent and that the existence of consent is a prerequisite for  
16 jurisdiction."); Bolduc v. United States, 402 F.3d 50, 55 (1<sup>st</sup> Cir.  
17 2005) (United States immune except to extent it waives its immunity);  
18 Dynamic Image Tech., Inc. v. United States, 221 F.3d 24, 39 (1<sup>st</sup> Cir.  
19 2000) ("As a sovereign nation, the United States is immune from  
20 liability except to the extent that it consents to suit."); Day v.  
21 Massachusetts Air Nat'l Guard, 167 F.3d 678, 681 (1<sup>st</sup> Cir. 1999)  
22 ("[a]s sovereign, the United States may not be sued for damages  
23 without its consent.") Limitations to the sovereign immunity of the  
24 United States such as the FTCA must be strictly construed and are not  
25 subject to waiver. Patterson v. United States, 451 F.3d 268, 270 (1<sup>st</sup>  
26 Cir. 2006); Dynamic Image Tech., 221 F.3d at 39.

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4 The FTCA waives the sovereign immunity of the United States "in  
5 the same manner and to the same extent as a private individual under  
6 like circumstances." See, Sosa v. Alvarez-Machain, 542 U.S. 692, 700,  
7 124 S.Ct. 2739, 159 L.Ed.2d 718 (2005) (FTCA designed to remove  
8 immunity from torts similar to private individuals); Santoni v.  
9 Potter, 369 F.3d 594, 602 (1<sup>st</sup> Cir. 2004) ("[FTCA] provides a limited  
10 congressional waiver of the sovereign immunity of the United States  
11 for torts committed by federal employees acting within the scope of  
12 their employment [similar to private parties in similar  
13 circumstances]"); Roman v. Townsend, 224 F.3d 24, 27 (1<sup>st</sup> Cir. 2000)  
14 ("FTCA waives the sovereign immunity of the United States with  
15 respect to tort claims").

16 The waiver of sovereign immunity under the FTCA is also limited  
17 by a requirement that those seeking relief present their claim to the  
18 pertinent federal dependency prior to seeking judicial relief. *Id.*  
19 Specifically, 28 U.S.C. § 2675(a) provides that "[a]n action shall  
20 not be instituted upon a claim against the United States for money  
21 damages for... injury or death caused by the negligent or wrongful  
22 act or omission of any employee of the Government while acting within  
23 the scope of this office or employment, unless the claimant shall  
24 have first presented the claim to the appropriate Federal agency".  
25 See also, 28 U.S.C. § 2401(b) which, in pertinent part reads: "[a]  
26 tort claim against the United States shall be forever barred unless  
it is presented in writing to the appropriate Federal agency within

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4 two years after such claim accrues". "Congress has taken pains to  
5 establish an administrative framework that claimants must follow  
6 before they can sue under the FTCA. One important component of this  
7 framework is the notice-of-claim provision." Dynamic Image Tech., 221  
8 F.3d at 39.

9 The notice requirement seeks to allow the government to inquire  
10 into the conduct at issue while at the same time assess its economic  
11 exposure. "The purpose of requiring exhaustion of administrative  
12 remedies is to avoid litigation where a claim can be resolved  
13 administratively. Exhaustion of administrative remedies is aimed at  
14 reducing court congestion and avoiding unnecessary litigation, while  
15 expediting the fair settlement of tort claims asserted against the  
16 government." 3 Lester S. Jayson and Robert C. Longstreth, *Handling*  
17 *Federal Tort Claims* § 17.01 p. 17-12 (LexisNexis Matthew Bender rel.  
18 42-3/99). See also, S. Rep. No. 1327, 89<sup>th</sup> Cong., 2d Sess. 6 (1966).

19 The Court of Appeals for the First Circuit "approaches the  
20 notice requirement leniently." Santiago Ramirez v. Sec'y of Dept' of  
21 Def., 984 F.2d 16, 19 (1<sup>st</sup> Cir. 1993). "[T]he express jurisdictional  
22 prerequisites of § 2675(a) are fully satisfied as long as the  
23 claimant states a claim of government wrongdoing and defines its  
24 damages in a sum certain." Patterson, 451 F.3d at 272. "This court  
25 has refused to interpret the notice-of-claim requirements woodenly.  
26 We have attempted instead to achieve a balance, recognizing that  
persons wishing to hold the federal sovereign liable in tort must

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4 satisfy the strictures of the law, but also recognizing that Congress  
5 did not intend to shield the federal fisc behind an impenetrable  
6 thicket of lawyerly technicalities." Dynamic Image Tech., 221 F.3d at  
7 40.

8 "The test is an eminently pragmatic one: as long as the language  
9 of an administrative claim serves due notice that the agency should  
10 investigate the possibility of particular (potentially tortious)  
11 conduct and includes a specification of the damages sought, it  
12 fulfills the notice-of-claim requirement." *Id.*

13 In sum, the administrative claim mechanism requires enough  
14 information regarding the identity of the persons seeking relief, the  
15 underlying grounds therefore and the sums demanded, to allow for a  
16 meaningful investigation of the facts and an assessment of potential  
17 liability. "Because the purpose of § 2675 is to inform the relevant  
18 agency of the circumstances of the accident so that it may  
19 investigate the claim and fairly respond by settlement or by defense,  
20 the notice requirement is met if the claimant (1) gives the agency  
21 written notice of his or her claim sufficient to enable the agency to  
22 investigate and (2) places a value on his or her claim." Marricone v.  
23 United States, 697 F.Supp. 874, 876 (E.D.Pa. 1988) (citation and  
24 internal quotation marks omitted).

25 "[T]he relevant criteria for a correct administrative claim [is]  
26 whether the agency was fully aware of who were the individuals  
actually pursuing the claim and the nature of the total claim."

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4 Adames-Mendez v. United States, 652 F.Supp. 356, 358 (D.P.R. 1987)  
5 (italics in original). See, Frantz v. United States, 791 F.Supp. 445,  
6 451 (D.De. 1992) (need to provide notice of who is claiming and for  
7 what injury).

8 Adequate notice also requires that the allegations at the agency  
9 level and the subsequent complaint "jibe". Dynamic Image Tech., 221  
10 F.3d at 41. See, Tentadue v. United States, 397 F.3d 840, 853 (10<sup>th</sup>  
11 Cir. 2005) (Notice provision requires "notice of the facts and  
12 circumstances underlying a claim rather than the exact grounds upon  
13 which plaintiff seeks to hold the government liable."); Dynamic Image  
14 Tech., 221 F.3d at 40 "claim did not contain so much as a hint about  
15 the alleged arrest or the incident that spawned it. To that extent,  
16 then, the amended complaint exceeded the scope of the administrative  
17 claim."

### 18 Standing

19 The Government argues that, in accordance with the Puerto Rico  
20 legal provisions, the adult plaintiffs in this case who were not  
21 specifically identified in the administrative claims nor filed  
22 independent claims may not pursue judicial relief.

23 Our role at this juncture is to determine whether the SF-95 Form  
24 filed by Carol Wojciechowicz individually and as Executrix of the  
25 Estate of Alexander Wojciechowicz satisfies the notice requirement of  
26 the FTCA for the individual claims of his adult children, Michael and  
Susan. Similarly, whether the SF-95 Form submitted by Michael



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4 Wojciechowicz individually, and as Executor of the Estate of  
5 Katherine Wojciechowicz Angrick, provided sufficient notice to the  
6 Government on behalf of the decedent's mother and surviving sister.

7 The pertinent FTCA regulations provide that claims "based on  
8 death may be presented by the executor or administrator of the  
9 decedent's estate, or by any other person legally entitled to assert  
10 such a claim in accordance with applicable State Law." 28 C.F.R.  
11 § 14.3(c).

12 "Liability under the Federal Tort Claims Act is determined in  
13 accordance with the law of the place where the act or omission  
14 occurred." Scanlon v. Dep't of the Army, 277 F.3d 598, 600 (1<sup>st</sup> Cir.  
15 2002). See, i.e., Santoni, 369 F.3d at 603 ("Because the alleged  
16 tortious conduct took place in Maine, we look to Maine tort law in  
17 determining the defendant's liability under the FTCA.") Thus, the  
18 substantive law of the place of the accident is used for ascertaining  
19 the authority to bring suit on behalf of others. Wozniak v. United  
20 States, 701 F.Supp. 259 (D.Mass. 1988).

21 Even though the United States argues that "the standing of the  
22 representatives of the estates is not at issue here [but rather]...  
23 whether the court can exercise subject matter jurisdiction over  
24 wrongful death claims brought in this case by family members, when  
25 these family members were not identified in the administrative claims  
26 presented to the FAA, and the family members did not file individual

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4 claims"<sup>2</sup> we find that, in this case, these two issues are  
5 inextricably intertwined. Notice cannot be examined in a vacuum. It  
6 is necessarily connected to the law which gives rise to the cause of  
7 action being asserted. The scope of the representation capacity of a  
8 plaintiff as well as the nature of the damages which may be collected  
9 thereby and on whose behalf will be determined by the state's  
10 applicable law. Hence, the adequacy of the notice may vary depending  
11 on which law is used to examine the scope of the representation,  
12 i.e., standing.

13 Thus, a claimant filing a SF-95 on behalf of others as  
14 authorized by local law may be, by that fact, providing notice of the  
15 claims of those individuals he is representing.

16 In this regard, applying the law where the wrongful death  
17 occurred, courts have determined that in particular circumstances the  
18 claims asserted by an estate's executor and/or representative  
19 constitute sufficient FTCA notice on behalf of others not identified  
20 by name in the claim. In Hiatt v. United States, 910 F.2d 737, 741  
21 (11<sup>th</sup> Cir. 1990), a case involving a claim for wrongful death  
22 submitted by the estate's representative, the court found that,  
23 pursuant to the Florida Wrongful Death Act, the claim was deemed to  
24 provide adequate notice of a minor son's cause of action even though  
25 he was not named in the administrative claim. The court reasoned that

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26 <sup>2</sup> Reply (docket No. 29) p. 2.

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4 "[i]n [the widow's] administrative claim it was clear that [the  
5 widow] was acting as the personal representative of [the estate], and  
6 thus, the government had notice that damages would be sought for all  
7 beneficiaries of the estate."

8 Similarly, in Starr v. United States, 262 F.Supp.2d 605 (D.Md.  
9 2003) the court ruled that even though only the name of decedent's  
10 mother appeared in the SF-95, the fact that the claim specified it  
11 was for "wrongful death" - only available to the parents of the  
12 deceased under Maryland law - and that the cover letter accompanying  
13 the SF-95 named both parents individually and the mother as Personal  
14 Representative of the Estate proved sufficient notice to the wrongful  
15 and survivorship claims for both parents. *See also*, Transco Leasing  
16 Corp. v. United States, 896 F.2d 1435 (5<sup>th</sup> Cir. 1990) (administrative  
17 claim filed by executor in accordance with Texas Wrongful Death Act  
18 complied with notice requirement as to decedent's widow and daughter  
19 even though they were not specifically identified in claim); Sullivan  
20 v. United States, 777 F.Supp. 695, 698-9 (N.D.Ind. 1991) (in  
21 accordance with Indiana law, administrative claim for wrongful death  
22 filed by widow as Personal Representative of the estate satisfied the  
23 § 2675(a) requirement of two minor children even though they were not  
24 named in the claim); Marricone, (applying Kentucky law, court held  
25 that failure of personal representative of the estate to identify  
26 decedent's two illegitimate minor children did not bar FTCA relief).

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4 In Puerto Rico, an estate is not a juridical person and as such  
5 does not have the legal capacity to prosecute a wrongful death claim.  
6 Except for minors - who may be represented by a parent - each  
7 particular member of the estate must individually provide notice of  
8 his/her claim. "[U]nder Puerto Rico inheritance law a succession or  
9 a decedent's estate is not an entity distinct and separate from the  
10 persons composing it. Put another way, the succession does not have  
11 existence by itself as a juridical person or entity on behalf of  
12 which a lawsuit can be brought." Arias-Rosado v. Gonzalez Tirado, 111  
13 F.Supp.2d 96, 98-9 (D.P.R. 2000). "Under Puerto Rican law a  
14 succession by itself does not have capacity to sue or to be sued and  
15 has no existence as a juridical person. If a succession intends to  
16 sue or is to be sued, the names of the persons composing the name  
17 must be expressed individually and in detail. In other words,  
18 although a succession may be a party plaintiff, the names of the  
19 persons who compose it must be alleged." Santos v. United States, 525  
20 F.Supp. 982, 984 (D.P.R. 1981) (internal citations omitted).

21 Cases arising from this jurisdiction have found that the failure  
22 to file individual FTCA claims is fatal unless notice is otherwise  
23 provided to the government. For instance, in Del Valle Rivera v.  
24 United States, 626 F.Supp. 347, 349 (D.P.R. 1986) even though the  
25 claim was filed on behalf of the estate of the deceased, the agency  
26 was subsequently informed of the names of the individual heirs and  
thereby complied with the jurisdictional notice requirement. In

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4 Santos, even though decedent appeared as the only claimant the court  
5 ruled that sufficient notice had been provided regarding the claims  
6 of both the widow and the minor children although not the adult  
7 children. The court noted that the agency was aware that the claim  
8 was being pursued by the widow who, as mother of the minor children,  
9 could also represent their interests. However, the adult children  
10 were required to file their individual claims and could not benefit  
11 from her efforts.

12 In sum, based on the foregoing, it is axiomatic that in Puerto  
13 Rico the relief awarded by the court in wrongful death cases does not  
14 enure to the benefit of the estate. Rather, each person affected  
15 thereby must independently seek compensation for his/her own damages  
16 which includes providing individual notice under § 2675(a).

17 In the case before us, the two administrative claims were  
18 submitted by the executors of the respective estates both  
19 individually and as representatives of each of the estates. Pursuant  
20 to Puerto Rico law, the fact that Carol and Michael Wojciechowicz  
21 were acting on behalf of the estates does not necessary translate  
22 into notice of the individual claims of the members of the two  
23 estates.

24 We find, however, the evidence presented to the FAA by  
25 plaintiffs herein sufficient to alert the government as to the  
26 identity of decedent's survivors, i.e., members of each of the  
27 estates. The claims for the two estates were filed the same day

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4 through the same counsel, all bore the same last name and the FAA  
5 denied all the claims via a single letter.<sup>3</sup> Further, the government  
6 had available a mechanism to further explore the identity of the  
7 members of the estate in case of doubt.<sup>4</sup> It must also be noted that  
8 the monetary demand in each of the complaints filed does not surpass  
9 the sums sought in the notices submitted at the agency level.

10 The essential issue here is adequate notification to the  
11 sovereign, the defendant herein. As previously noted, this Circuit  
12 has made it plain that it "approaches the notice requirement  
13 leniently." Santiago Ramirez, 984 F.2d at 19. It has also held that  
14 "persons wishing to hold the federal sovereign liable in tort must  
15 satisfy the strictures of the law, but also recognizing that Congress  
16 did not intend to shield the federal fisc behind an impenetrable  
17 thicket of lawyerly technicalities." Dynamic Image Tech., 221 F.3d at  
18 40. I would add with respect to the matter of the notification  
19 requirement that it is unbecoming for the sovereign to "play dumb".

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20 <sup>3</sup> In the case of the claim of Carol Wojciechowicz for the  
21 wrongful death of her daughter, the funeral bill was issued to her  
22 name, the letter authorizing her counsel to file suit also made  
23 reference to potential claims for the deaths of Katherine and her  
24 son. Similarly, with respect to Michael's claim for the wrongful death of  
25 his father, plaintiffs submitted an amendment to the Operating Agreement of  
26 Alexander Leasing, L.L.C. appointing the widow as general manager of the  
company was executed by Michael Wojciechowicz, a/k/a Tim Wojciechowicz  
as further evidence of their position.

<sup>4</sup> See, 28 C.F.R. § 14.4(a)(3) which provides that "[i]n support  
of a claim based on death, the claimant may be required to submit the  
[f]ull names... of the decedent's survivors...."

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Based on the foregoing, the Motion of Defendant United States of America to Dismiss Certain Claims for Lack of Subject Matter Jurisdiction (docket No. **22**) is **DENIED**.<sup>5</sup>

IT IS SO ORDERED.

In San Juan, Puerto Rico, this 20<sup>th</sup> day of February, 2007.

S/Raymond L. Acosta  
RAYMOND L. ACOSTA  
United States District Judge

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<sup>5</sup> See, Opposition (docket No. **27**) and Reply (docket No. **29**).